



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/899,405	07/05/2001	Nicolas Albisetti	20892-22	3280

7590 12/04/2002

OPPENHEIMER WOLFF & DONNELLY LLP
Suite 3800
2029 Century Park East
Los Angeles, CA 90067-3028

EXAMINER

BUECHNER, PATRICK M

ART UNIT	PAPER NUMBER
----------	--------------

3754

DATE MAILED: 12/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/899,405

Applicant(s)

ALBISETTI, NICOLAS

Examiner

Patrick M Buechner

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-7, 10, 12-16, 22, 24, 27 and 28 is/are rejected.
- 7) ☒ Claim(s) 4, 8, 9, 11, 17-21, 23, 25 and 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "140" has been used to designate both a dispensing end piece (Figure 11) and a device (Figure 13). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

2. Applicant is reminded of the proper language and format for an abstract of the disclosure. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided.

3. The disclosure is objected to because of the following informalities: on page 6, lines 1-3 are repetitive and should be deleted.

Appropriate correction is required.

Claim Objections

4. Claims 8, 9 and 21 are objected to because of the following informalities:

- In claims 8 and 9, it appears as though the dependency is incorrect as there is no antecedence for "the activation means".

- In claim 21 there is no antecedence for “the neck of the receptacle” and it is not inherent that a receptacle have a neck.

Appropriate correction is required.

5. Claims 24-27 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 24-27 are use claims having claim 1 (an apparatus claim) as a preamble, this is improper, see MPEP 608.01(n) section II.
6. Claims 24-27 are objected to because of the following informalities: claims 24-27 are use claims and are improper under MPEP 2173.05(q). Appropriate correction is required.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3, 5-7, 13 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Gregoire (US 5,860,569).

Gregoire discloses a two compartment device with a bellows expandable portion and two bearing surfaces (36, 14) the second bearing surface (14) a transverse wall connected to the bellows by a wall (12). Gregoire also discloses a removable plug (28), which is such that it forms the two compartments, and a rod secured to the dispenser endpiece. Gregoire also

discloses a break-off portion (58), and the device of Gregoire can be used with the dispenser pointing downwards.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gregoire in view of Hundertmark et al. (US 5,647,481).

Gregoire discloses all the claims with the exception of the two compartments being separate containers rotatable relative to each other to remove the plug.

Hundertmark teaches a two-compartment container, the two compartments rotatable relative to each other to remove the plug.

Therefore it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide Gregoire with the structure taught by Hundertmark.

Doing so would be a simple substitution of equivalent means for removing the plug between the compartments.

11. Claims 14, 15, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gregoire in view of Savary (US 2,757,824).

Gregoire discloses all the limitations of claims 14, 15 and 28, with the exception of the outlet being off center from the container.

Savary teaches an outlet off center from the container (Figures 1-3 and 5).

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the container of Gregoire with an off center outlet as taught by Savary.

Doing so would be an obvious relocation of an existing part, as Savary discloses the locations are equivalent (Figures 1-5).

12. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gregoire in view of Savary as applied to claim 14 above, and further in view of Andris (US 5,238,156).

Gregoire in view of Savary discloses all the limitations of claim 16 with the exception of the outlet being perpendicular to the container axis.

Andris discloses a bellows pump container with an outlet perpendicular to the container axis.

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the container of Gregoire/Savary with an outlet as taught by Andris.

Doing so would be an obvious relocation of existing parts and would allow for more force to be applied to the bearing surface, as there would be more room to place the user's finger/s.

13. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gregoire in view of Yamamoto et al. (US 6,332,726).

Gregoire discloses all the limitations of claim 22 with the exception of multiple outlets.

Yamamoto teaches multiple outlets.

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the device of Gregoire with multiple outlets as taught by Yamamoto.

Doing so would be an obvious duplication of parts that would allow for more product to be dispensed at the same time over a greater area.

14. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gregoire in view of Musel (US 5,088,627).

Gregoire discloses all the limitations of claim 27 but is silent as to what the product dispensed is applied to.

Musel teaches a two-compartment container usable with hair dye that a user would inherently apply to hair or scalp.

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to use the device of Gregoire as taught by Musel, because of the very similar structure between Gregoire and Musel would indicate that the device of Gregoire would be well suited to dispense hair dye.

Allowable Subject Matter

15. Claims 4, 8, 9, 11, 17-21, 23, 25 and 26 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and to eliminate all other objections in paragraphs 4-6 above.

Art Unit: 3754

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cernei (US 3,651,990), Baudin (US 5,908,107), and Hof (US 6,293,395).

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick M Buechner whose telephone number is (703) 308-2602.

The examiner can normally be reached on M-Th (8:00-4:30) and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (703) 308-2696. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

Patrick M Buechner
Examiner
Art Unit 3754

1A 12/2/02

PB
December 2, 2002


Gene Mancene
Supervisory Patent Examiner
Group 3700